

## Exhibit H-1

WAIS Document Retrieval

GENERAL DECISION: UT20030026 03/05/2004 UT26

Date: March 5, 2004

General Decision Number: UT20030026 03/05/2004

Superseded General Decision Number: UT020026

State: Utah

Construction Types: Highway

Counties: Box Elder, Cache and Rich Counties in Utah.

### HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	06/13/2003
1	01/23/2004
2	03/05/2004

IRON0027-011 07/01/2003

	Rates	Fringes
Ironworkers; Structural, Reinforcing and Ornamental.....	\$ 21.76	9.67

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SUUT1992-005 03/24/1992

	Rates	Fringes
Carpenter.....	\$ 16.13	2.80
Cement Mason.....	\$ 14.40	2.41
Flagger.....	\$ 7.05	1.75

#### Ironworkers:

Fence Erection(Unloading with Power Equipment); Aligning of Post; Installation of Wire Fabric, Lateral Struts, Bracing, Gates, and Hardware.....	\$ 16.65	3.65
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#### Laborers:

Asphalt Raker.....	\$ 12.40	2.72
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#### Concrete Laborer

(Compaction, underground fine grading, operation of shute or bucket).....	\$ 12.95	2.36
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Fence Erection Laborer(Clearing of right of way, unloading of materials by hand digging of post holes and pouring of concrete in connection therewithin).. <td>\$ 12.47</td> <td>2.84</td>	\$ 12.47	2.84
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General Laborer.....	\$ 11.30	2.73
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Pipelayers (Smooth sides and bottom of trenches, does rigging of pipe, assembles and installs concrete and tile pipe).....\$ 12.52	2.79
Power Tool Cutting Torch, Operators of gasoline, electric, or pneumatic tools, (E.G.Compressor, compactor,jackhammer, vibrator, concrete saw, chain saw and concrete cutting torch.....\$ 12.52	2.79
Painter, Spray.....\$ 14.05	1.62
Piledriverman.....\$ 23.54	2.80
Power equipment operators:	
Backhoe, Tire & Track, over 5 cu. yds.....\$ 18.14	7.03
Backhoe, Tire & Track, under 5 cu. yds.....\$ 17.82	7.15
Backhoe/Loader Combo.....\$ 18.55	6.67
Blade, Smooth/Finish.....\$ 18.28	6.84
Bulldozer, D7 or less.....\$ 17.59	7.08
Heavy Duty Repairman.....\$ 18.05	7.11
Loader, over 10 cu. yds.....\$ 18.95	6.94
Loader, under 2 1/2 cu. yds.....\$ 17.15	7.08
Piledriver.....\$ 21.85	7.23
Roller, Asphalt.....\$ 17.15	7.23
Roller, Grade/Compaction....\$ 15.48	5.82
Sheepfoot Compactor.....\$ 16.29	7.08
Truck drivers: (Dump Trucks - Water Level capacity Bottom, end and side), including Dumpster Truck, Turnawagons, Turnarockers and dumpcrete):)	
8 cu. yds. and less than 14 cu. yds.....\$ 15.99	4.91
Less than 8 cu. yds.....\$ 15.84	5.87
Mixer Truck.....\$ 8.63	

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 \* TEAM0222-001 07/01/2003

	Rates	Fringes
Truck Driver, Dump Trucks - Water Level Capacity (Bottom, End and Side),Including Dumpster Truck, Turnawagons, Turnarockers and Dumpcrete: 14 cu yds. and less than 35 cu. yds.....\$ 16.49		7.52

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 \* TEAM0222-008 07/01/2003

	Rates	Fringes
Truck drivers: (Water, Fuel & Oil Tank)		
0 to less than 1,200 gal...\$ 16.65		7.52
1,200 gal. to less than 2,500 gal.....\$ 16.19		7.52
10,000 gal. to less than 15,000.....\$ 17.14		7.52
15,000 gal. to less than 20,000 gal.....\$ 17.39		7.52

2,500 gal. to less than		
4,000.....	\$ 16.34	7.52
20,000 gal. to less		
than 25,000 gal.....	\$ 17.74	7.52
4,000 gal. to less than		
6,000 gal.....	\$ 16.64	7.52
6,000 gal. to less than		
10,000 gal.....	\$ 16.89	7.52
Over 25,000 gal.....	\$ 17.89	7.52

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
 Wage and Hour Division  
 U.S. Department of Labor  
 200 Constitution Avenue, N.W.  
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

## EXHIBIT H-2

### CONTRACTOR ELIGIBILITY/NOTICE TO PROCEED

March 25, 2008

Mr. Jim Bowe  
CDBG Project Manager  
100 South Main Street  
Utopia, Utah 84000

**RE: 2008 CDBG Contract # 08-0000  
Town of Utopia – Waterline Upgrade  
Contractor Eligibility**

Dear Mr. Bowe:

This is in response to your request for a determination of contractor eligibility. I have reviewed the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs as of March 25, 2008, published by the U. S. General Services Administration, and find that the following party does not appear in those lists:

#### **XYZ Construction Company**

As a result of this determination, the Town of Utopia is authorized to proceed in contracting with the above named party. Make sure there is a signed contract with the general contractor and that the contract includes Form 4010 – Federal Labor Standards Provisions from the Department of Housing and Urban Development. If there are any questions, please contact me at 538-8724.

Sincerely,

Glenna A. Matekel  
Program Specialist

### EXHIBIT H-3

#### Federal Labor Standards Provisions

U.S. Department of Housing and Urban  
Development - Form 4010 (Updated 07/2003)

#### Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All labors and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis Bacon Act on behalf of labors or mechanics are considered wages paid to such laborers or mechanics, subject to the provision of 29 CFR-5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of work in a prominent and accessible place where it can be easily seen by the workers.

**(ii)(a)** Any class of labors or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met.

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the labors and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration; U.S. Department of Labor, Washington, D.C. 20210. The administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the labors or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 days period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or a program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall be set out accurately and completely all of the information required to be maintained under 29 CFR part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance" signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(I) and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3.(ii)(b) of this section.
- (d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

**4. (i) Apprentices and Trainees.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provided for less than full fringe

benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equally employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses 29 in CFR Part 5.5

**7. Contracts termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis Bacon and Related Act Requirements.** All rulings and interpretations of the Davis Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of ... influencing in any way the action of such Administration ... makes, utters or publishes any statement, knowing the same to be false ... shall be fined not more than \$5,000 or imprisoned not more than two years or both".

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or

mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours in excess of forty hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under work conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

**(3)** The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## EXHIBIT H-4

### Pre-Construction Conference Agenda/Minutes

Date: \_\_\_\_\_

Place: \_\_\_\_\_

Attendees:

Representing:

Phone:

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- \_\_\_ Davis Bacon Wages; must be included in contract or specifications
- \_\_\_ Fringe Benefits (what's allowable)
- \_\_\_ Contract Work Hours and Safety Standards Act and Overtime wages
- \_\_\_ Posting of Davis Bacon Wage decision and posters on job site
- \_\_\_ No Apprentices (paid apprentice wages) unless given prior approval from CDBG Staff.
- \_\_\_ Additional Wage Classifications
- \_\_\_ Sub-contractors
- \_\_\_ Payroll Forms (submitted weekly)
- \_\_\_ Payroll Errors/Disputes
- \_\_\_ Employee Interviews
- \_\_\_ EEOE posters posted on job site. EEOE statement included in contract and job advertisements
- \_\_\_ Sec. 3 Compliance (when applicable)
- \_\_\_ Contractor Bid Documentation – **BID OPENING DATE**
- \_\_\_ Engineer's Request for Proposal (RFP)

## EXHIBIT H-5

NAME OF CONTRACTOR OR SUBCONTRACTOR										ADDRESS:									
PAYROLL NUMBER			WEEK ENDING			PROJECT AND LOCATION													
(1)	# OF WITHHOLDING EXEMPTIONS	(3)	Overtime or Straight	(4) Day & Date							(5)	(6)	(7)	(8)					(9)
NAME, ADDRESS of EMPLOYEE		WORK CLASSIFICATION	Overtime or Straight								TOTAL HOURS	RATE OF PAY	GROSS AMT EARNED	DEDUCTIONS					NET WAGES PAID
														FICA	WITHHOLDING TAX		OTHER	TOTAL DED	
				HOURS WORKED EACH DAY															
			O																
			S																
			O																
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			O																
			S																

Date \_\_\_\_\_

1. \_\_\_\_\_,  
(Name of signatory party) (Title)

do hereby state

(1) That I pay or supervise the payment of the persons employed by  
\_\_\_\_\_ on the \_\_\_\_\_;  
(Contractor or Subcontractor) (Building or work)

that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_,  
200\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ all persons employed on  
said project have been paid the full weekly wages earned, that no rebates have been or will be  
made either directly or indirectly to or on behalf of said  
\_\_\_\_\_ from the full weekly  
(Contractor or Subcontractor)

wages earned by any person and that no deductions have been made either directly or indirectly  
from the full wages earned by any person, other than permissible deductions as defined in  
Regulations, part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland  
Act, as amended (48 Stat. 94B, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and  
described below:

\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for  
the above period are correct and complete; that the wage rates for laborers or  
mechanics contained therein are no less than the applicable wage rates contained  
in any wage determination Incorporated into the contract; that the classifications  
set forth therein for each laborer or mechanic conform with the work he  
performed.

(3) That any apprentices employed in the above period are duly registered in a  
bona fide apprenticeship program registered with a State apprenticeship agency  
recognized by the Bureau of Apprenticeship and Training, United States  
Department of Labor, or if no such recognized agency exists in a State, are  
registered with the Bureau of Apprenticeship and Training, United States  
Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS,  
OR PROGRAMS

☐ -- In addition to the basic hourly wage rates paid to each laborer or mechanic

listed in the above referenced payroll, payments of fringe benefits as listed in  
the contract have been or will be made to appropriate programs for the  
benefit of such employees, except as noted in Section 4(c) below.

#### WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ -- Each laborer or mechanic listed in the above referenced payroll has been  
paid, as indicated on the payroll, an amount not less than the sum of the  
applicable basic hourly wage rate plus the amount of the required fringe  
benefits as listed in the contract, except as noted in Section 4(c) below.

#### (b) EXCEPTIONS

(c) EXCEPTION (CRAFT)	EXPLANATION
REMARKS	

NAME AND TITLE	SIGNATURE
THE WILFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

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## EXHIBIT H-6

### 1) PERMISSIBLE PAYROLL DEDUCTIONS

The following payroll deductions may be made without requesting approval:

- (a) Any deductions made in compliance with the requirements of Federal, State or local law.  
  
Examples:      Federal withholding taxes  
                         State withholding taxes  
                         Federal Social Security taxes
- (b) Any deductions of sums previously paid to the employee as a bona fide prepayment of wages when prepayment is made without discount or interest.  
  
Example:      A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of advanced funds.
- (c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of . . .  
  
The contractor  
The subcontractor  
Any affiliated person or  
When collusion or collaboration exists
- (d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer, or representatives of the employer, or both for the purpose of providing (from principal, or income, or both). . .  
  
Medical or hospital care  
Pensions or annuities on retirement  
Death benefits  
Compensation for injuries, illness, accidents, sickness, or disability  
For insurance for any of the foregoing  
Unemployment benefits  
Vacation pay  
Savings accounts
  - 1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done.
  - 2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.
- (e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
- (f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

- (h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
- (i) Any deductions to pay regular union initiation fees and membership dues not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.
- (j) Any deductions not more than for the "reasonable cost" of board, lodging or other facilities meeting the requirements of Section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under section 516.27(a) of this title shall be kept.
- (k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such a deduction does not violate the Fair Labor Standards Act or is not prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and the deduction is either (2) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

## 2) FRINGE BENEFITS

Code Of Federal Regulations Title 29 - Section 5.20 - 5.31. The 1964 amendments to the Davis-Bacon Act require that the prevailing wage determined for Federal and Federally-assisted construction include (among other things):

- (a) The basic hourly rate of pay; and
- (b) The amount contributed by the contractor/subcontractor for certain fringe benefits (or the cost to contractor/subcontractor for such benefits). Therefore, if the wage determination lists fringe benefits, the contractor/subcontractor must pay to the employee in cash or fringe benefits an amount that equals the total of the basic hourly rate and fringes appearing on the wage determination. Any combination of cash payments and fringes is allowed, provided that the part you provide in benefits is:
  - Explained to all employees in writing.
  - Administered through a third-party or through an actuarially sound, enforceable, unfunded commitment. (The Secretary of Labor may require unfunded plans to be held in a separate, special account).
  - If the employee works overtime, the premium must be computed on basic hourly rate shown on the wage determination, even if the employer pays less than this amount in cash because of increased fringes.

(In other words, if you take a credit on the basic hourly rate because you pay more in fringes than required by the wage determination, you must revert back to the rate in the wage determination when computing and paying for overtime work.)

A fringe benefit is considered an employment benefit (such as a pension, a paid holiday, health insurance) granted by an employer that involves a monetary cost without affecting the basic wage rates.

The Statutory Provisions of fringe benefits under Davis-Bacon are contained in Part 5.23:  
The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act, in part, are as follows:

- (c) The rate of contribution irrevocably made by a contractor/subcontractor to a trustee or to a third person pursuant to a fund, plan, or program. The "third person" must be one who is not affiliated with the contractor or subcontractor. The Trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor/subcontractor be able to recapture any of the contributions paid in or in any way divert the funds to his own use or benefit.

Term: Fund, plan or program, is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The contributions for fringe benefits must be made pursuant to a fund, plan or program (Section 1(b)(2)(A) of the Act).

- d) The rate of costs to the contractor/subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected but only where the contractor/subcontractor is not required by other federal, state or local law to provide such benefit.

The Act lists all types of fringe benefits that Congress considered to be common in the construction industry as a whole. These include, where the contractor/subcontractor pays all or part of, the following:

- Medical or Hospital Care
- Pensions on retirement or death
- Compensation for injuries or illness resulting from occupational activity
- Insurance to provide for any of the foregoing
- Unemployment benefits
- Life Insurance
- Disability or Sickness Insurance
- Accident Insurance
- Vacation and Holiday Pay
- Defrayment of costs of Apprenticeship or other similar programs
- Other bona fide Fringe Benefits

Term: Other "bona fide fringe benefits" is the so-called "open-end" provision. This was included so that new fringe benefits may be recognized as they become prevailing.

The Act excludes fringe benefits that a contractor/subcontractor is obligated to provide under other Federal, State or local law. No credit may be taken under the Act for the payments made for such benefits; e.g., payment for Workmen's Compensation Insurance under either a compulsory or elective State statute -- these are not considered payments for fringe benefits under the Act. Also, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act.

Only the amount of contributions or costs for fringe benefits that meet the requirements of the Act will be considered.

The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon Wage Determination. Wage determinations will not contain such benefits when such benefits are not prevailing in the area of construction.

A contractor/subcontractor performing work subject to a Davis-Bacon Wage Determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for "bona fide" fringe benefits or the types listed in the applicable wage determination or otherwise found to be prevailing by the Secretary of Labor, or by a combination thereof. Sometimes the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, however, the Secretary, at his discretion, may express in the wage determination that rate of contribution or cost used in the formula or method; or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act.

Un-funded Plans (Part 5.28): There are no types of fringe benefits eligible for consideration as a so-called "un-funded plan" unless:

- It could be reasonably anticipated to provide benefits described in the Act;
- It represents a commitment that can be legally enforced;
- It is carried out under a financially responsible plan or program; and
- The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected.

The cost to a contractor/subcontractor which may be reasonably anticipated in providing benefits of the types describe in the Act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the Act (see 1(b)(2)(B) of the Act).

Legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor/subcontractor.

It is in this manner that the Act provides for the consideration of "unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the act.

There is a protection, however, against the use of this provision as a means of avoiding the Act's requirements. The words "reasonably anticipated" are intended to require that any un-funded plan or program be able to withstand a test that can be described as one of actuarial soundness. As in the case of other fringe benefits payable under the Act, and un-funded plan must be "bona fide" and not a mere simulation or sham for avoiding compliance with the Act.

## **EXHIBIT H-7**

March 25, 2008

Abelson and Johnson, General Contractors  
715 North Charles  
High Point, Utah 84200

Dear Mr. Johnson:

Please take immediate steps to correct the payroll submitted by your contractor, Barton Electric. The deficiencies described on the attached list must be corrected within 30 days.

As General Contractor for this project, you are responsible for making sure revised payrolls are . . .

- Corrected promptly
- Reviewed by you (or another officer of the firm) before they are sent

If you have questions or concerns, please phone me at 801-752-5728. Please remember: prompt correction of deficiencies is essential. HUD can, if necessary, withhold payment of grant funds until the deficiencies are corrected.

Sincerely,

Joe Utah

# Record of Employee Interview

## U.S. Department of Housing and Urban Development Office of Labor Relations

OMB Approval No. 2501-0009  
(exp. 08/31/2007)

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. The information is collected to ensure compliance with the Federal labor standards by recording interviews with construction workers. The information collected will assist HUD in the conduct of compliance monitoring; the information will be used to test the veracity of certified payroll reports submitted by the employer. **Sensitive Information.** The information collected on this form is considered sensitive and is protected by the Privacy Act. The Privacy Act requires that these records be maintained with appropriate administrative, technical, and physical safeguards to ensure their security and confidentiality. In addition, these records should be protected against any anticipated threats or hazards to their security or integrity that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom the information is maintained. **The information collected herein is voluntary, and any information provided shall be kept confidential.**

1a. Project Name			2a. Employee Name		
1b. Project Number			2b. Employee Phone Number (including area code)		
1c. Contractor or Subcontractor (Employer)			2c. Employee Home Address & Zip Code		
			2d. Verification of identification? Yes <input type="checkbox"/> No <input type="checkbox"/>		
3a. How long on this job?	3b. Last date on this job before today?	3c. No. of hours last day on this job?	4a. Hourly rate of pay?	4b. Fringe Benefits? Vacation Yes <input type="checkbox"/> No <input type="checkbox"/> Medical Yes <input type="checkbox"/> No <input type="checkbox"/> Pension Yes <input type="checkbox"/> No <input type="checkbox"/>	4c. Pay stub? Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Your job classification(s) (list all) --- continue on a separate sheet if necessary					
6. Your duties					
7. Tools or equipment used					
8. Are you an apprentice or trainee?		<b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/>	10. Are you paid at least time and ½ for all hours worked in excess of 40 in a week?		<b>Y</b> <input type="checkbox"/> <b>N</b> <input type="checkbox"/>
9. Are you paid for all hours worked?		<input type="checkbox"/> <input type="checkbox"/>	11. Have you ever been threatened or coerced into giving up any part of your pay?		<input type="checkbox"/> <input type="checkbox"/>
12a. Employee Signature			12b. Date		
13. Duties observed by the Interviewer (Please be specific.)					
14. Remarks					
15a. Interviewer name (please print)		15b. Signature of Interviewer		15c. Date of interview	

## Payroll Examination

16. Remarks

- Project Manager: Using the above information, compare the interview data with the certified payroll to ensure compliance.

17a. Signature of Payroll Examiner ( Project Manager)	17b. Date
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